

RATTET PLLC
Attorneys for the Debtor
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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:

MANHATTAN RIVER GROUP, LLC, Chapter 11
Case No. 18-14125(SHL)

Debtor.

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**MOTION OF THE DEBTOR FOR AN ORDER AUTHORIZING THE DEBTOR TO
OBTAIN CREDIT PURSUANT TO SECTION 364(c)(1) and (2)
OF THE BANKRUPTCY CODE**

**TO: THE HONORABLE SEAN H. LANE,
UNITED STATES BANKRUPTCY JUDGE:**

The above-captioned debtor and debtor-in-possession Manhattan River Group, LLC (the “Debtor”), by its attorneys, Rattet PLLC, hereby submits this motion (the “Motion”) for entry of an order authorizing the Debtor to obtain credit from Waterfront Hospitality Partners LLC (“Lender”) pursuant to §364(c)(1) and (2) of the Bankruptcy Code. In support of this Motion, the Debtor respectfully states as follows:

JURISDICTION

1. The Court has jurisdiction over this Motion under 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue of this proceeding and this Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409.

2. The statutory bases for the relief requested herein are §§ 105(a) and 364(b) of title 11 of the United States Code, 11 U.S.C. §§ 101, *et. seq.* (the “Bankruptcy Code”) and Rule 4001 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

BACKGROUND

3. On December 20, 2018 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code (the “Chapter 11 Case”). The Debtor has continued in possession of its property and the management of its business affairs as a debtor-in-possession pursuant to §§ 1107 and 1108 of the Code.

4. No official committee of unsecured creditors, trustee or examiner has been appointed.

5. The Debtor owns and operates La Marina, a restaurant and marina located on the Hudson River at 348 Dyckman Street in the Inwood section of Manhattan (the “Premises”).

6. The Debtor operates the Premises pursuant to a License Agreement dated June 29, 2009 between the Debtor as tenant and the New York City Parks & Recreation Department (“NYCP&R”) as landlord.

7. The Debtor is just starting to enter its active season which runs approximately from May through October, during which period the Debtor generates substantially all of its revenue.

8. The Debtor is understandably short on working capital and cash flow at this unseasonal time of the year and has been concentrating its efforts in these early stages of the Chapter 11 case on finding additional sources of capital or other strategic transaction so that it

may promptly promulgate and confirm a plan of reorganization.

9. To that end, the Debtor has been in negotiations with the Lender, an arms-length party with no connections to the Debtor or its insiders, about funding the Debtor and, possibly, a plan of reorganization.

10. The parties have determined that it is first most important that the Debtor's cash flow be stabilized as the busy season looms and so it is prepared to fully open for business on time in May.

11. As discussed in detail below, the Lender has agreed to make a DIP loan to the Debtor in the total amount of \$150,000 subject to the terms and conditions of the Loan Agreement, a copy of which is annexed hereto as Exhibit "A" and made a part hereof, and to be used in accordance with the Debtor's projected cash flow budget (the "Budget"), a copy of which is annexed hereto as Exhibit "B".

12. As set forth in the Budget, the Debtor will first use DIP loan proceeds to become current on its post-petition obligations to NYCP&R under the License (approximately \$46,000 as of May 1, 2019) and will utilize the rest of the loan facility for ordinary business operations and getting the restaurant and marina ready for opening.

RELIEF REQUESTED

13. The Debtor submits this Motion pursuant to § 364(c)(1) and (2) of the Bankruptcy Code and Bankruptcy Rule 4001(c) seeking authority for the Debtor to obtain credit in order to allow the Debtor to meet its post-petition operational obligations and working capital requirements.

14. The Debtor seeks to borrow up to the sum of \$150,000 from the Lender pursuant to the terms of the Loan Agreement

15. As set forth above in the Budget, the Debtor expects to be operating at or close to break even in the upcoming months. Until such time that the Debtor reorganizes, the Debtor urgently needs funds to sustain its operations. The Lender is willing to lend the necessary funds on terms which the Debtor believes are quite favorable, including requiring no security interest or personal guarantees and requiring only an administrative claim in return.

BASIS FOR THE RELIEF SOUGHT

16. § 364 (a), (b), (c) and (d) of the Bankruptcy Code provide as follows:

(b) The court, after notice and a hearing, may authorize the trustee to obtain unsecured credit or to incur unsecured debt other than under subsection (a) of this section, allowable under section 503(b)(1) of this title as an administrative expense.

(c) If the trustee is unable to obtain unsecured credit allowable under section 503(b)(1) of this title as an administrative expense, the court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt-

(1) with priority over any or all administrative expenses of the kind specified in section 503(b) or 507(b) of this title;

(2) secured by a lien on property of the estate that is not otherwise subject to a lien; or

(3) secured by a junior lien on property of the estate that is subject to a lien.

(d)(1) The Court, after notice and a hearing, may authorize the incurring of debt secured by a senior or equal lien on property of the estate that is subject to a lien only if-

(A) the [debtor] is unable to obtain such credit otherwise; and

(B) there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted. (emphasis supplied)"

17. Thus, § 364 of the Bankruptcy Code provides for an escalating level of protection for a lender, providing such lender sufficient protection and incentive to grant credit in a speculative and uncertain business environment.

18. In the instant case, the Lender is seeking (a) a first priority lien on all of the Debtor's personal property assets, which assets are not subject to any lien or security interests, and (b) a super priority administrative expense claim pursuant to § 364(c)(2) of the Bankruptcy Code, subject to a carve out for (a) the unpaid fees of the Clerk of the Court, (b) United States Trustee fees under 28 U.S.C. Section 1930 and 31 U.S.C. Section 3717, (c) the fees of a hypothetical chapter 7 trustee in an amount not to exceed \$10,000 and (d) proceeds from avoidance actions under Article V of the Bankruptcy Code (collectively, the "Carve Out"). Given the risk involved in, inter alia, lending into a Chapter 11, and given the Debtor's current financial affairs, Lender requires at a minimum the relief afforded under Sections 364(c)(1) and (2) of the Bankruptcy Code.

19. Without such funds, the Debtor will likely be unable to meet its obligations including but not necessarily limited to becoming current on its post-petition obligations under the License. The funding is necessary to ensure the Debtor's ability to preserve the License and satisfy its post-petition administrative obligations and operate its business.

TERMS AND CONDITIONS OF THE PROPOSED LENDING

20. The Debtor seeks to borrow up to the aggregate sum of \$150,000.00 from the Lender, upon entry of orders approving the borrowing on an interim and final basis, pursuant to terms and conditions as stated in the Agreement.

21. The Lender has agreed to a reasonable interest at the rate of 12% per annum, with interest to accrue pending maturity which shall occur on November 1, 2019.

22. In addition, upon and subject to confirmation of a plan of reorganization in the Debtor's Chapter 11 case, Lender agrees to convert all of the then-outstanding indebtedness under the Loan Agreement as equity in the reorganized Borrower entity. The principal amount of the loan indebtedness thereunder shall convert at the rate of Six (6%) Percent equity interest for every \$50,000 in outstanding indebtedness hereunder.

23. The Loan Agreement is also contingent on approval by the Court of the Debtor's motion to approve a proposed Management agreement with 369 Hudson River Partners LLC, which motion shall be returnable simultaneously herewith.

24. A proposed 13-week budget is annexed hereto as Exhibit "B".

25. A form of proposed Order is annexed hereto as Exhibit "C".

26. In light of the foregoing, the Debtor respectfully submits that the proposed Agreement is in the best interests of the Debtor, its creditors and the estate at large.

Service

27. This Motion will be served via overnight delivery upon (i) all parties asserting secured claims against the Debtor, (ii) the Office of the U.S. Trustee, (iii) all parties filing

Notices of Appearance; (iv) counsel for NYCP&R; (v) the Debtor's 20 largest unsecured creditors, and (vi) and all other parties entitled to notice pursuant to Bankruptcy Rule 4001(c).

28. No prior request for the relief sought herein has been made to this or any other court.

WHEREFORE, the Debtor respectfully requests that the Court enter the proposed form of Order annexed hereto as Exhibit "C", granting the Motion approving the Loan Agreement, together with such other and further relief as is just and proper under the circumstances, for all of which no prior request has been made to this or any other Court.

Dated: White Plains, New York
May 9, 2019

RATTET PLLC
Attorneys for the Debtor
202 Mamaroneck Avenue
White Plains, New York 10601
(914) 381-7400

By: /s/ Robert L. Rattet
Robert L. Rattet

LOAN AGREEMENT

This Loan Agreement (this “Agreement”) is made this 9th day of May, 2019, by and between Manhattan River Group LLC, debtor-in-possession, having a principal place of business located at 348 Dyckman Street, New York, NY 10034 (hereinafter referred to as the “Borrower”) and Waterfront Hospitality Partners LLC, having a principal place of business located at 7700 Congress Avenue, Suite 3106, Boca Raton, Florida 33487 (hereinafter referred to as the “Lender”).

WITNESSETH:

WHEREAS, Borrower is a debtor-in-possession pursuant to a voluntary petition for reorganization filed under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”), case no. 18-14125 (SHL) (the “Bankruptcy Case”), and has continued in the possession of its property and the management of its affairs as a debtor-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code; and

WHEREAS, Borrower desires to obtain a loan to partially fund current business operations of the Borrower as more particularly set forth herein; and

WHEREAS, Lender is willing to provide a loan as requested by Borrower on the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the foregoing and the mutual covenants contained herein, the parties agree as follows:

1. Loan. Upon the entry of one or more orders of the Bankruptcy Court (the “Financing Orders”) authorizing and approving this Loan Agreement and its terms and

conditions, which order shall be in form and substance acceptable to the Lender in its sole discretion, the Lender shall make available to the Borrower a term loan in the maximum principal amount of ONE HUNDRED FIFTY THOUSAND DOLLARS (\$150,000.00) (the "Loan").

2. Use of Loan Proceeds. The proceeds of the Loan shall be used solely for the purposes of financing ordinary and customary business operations of the Borrower.

3. Interest Rate; Interest Payments. The outstanding principal balance of the Loan, measured on a daily basis, shall accrue interest at the rate of twelve percent (12%) per annum. All interest will be calculated using a 360-day year and actual days elapsed. All outstanding interest shall be due and payable in full within seven (7) days after written demand following the earlier to occur of the Maturity Date and a Termination Event. Any overdue Interest Payments and any overdue payments of principal, including any amounts that are outstanding after the Maturity Date or a Termination Event, shall accrue interest thereon at the rate of sixteen percent (16%) per annum until the date of payment.

4. Principal Repayment. All outstanding and unpaid principal shall be due and payable in full within seven (7) days after written demand following the earlier to occur of the Maturity Date or a Termination Event. No amount of principal that is repaid may be reborrowed

5. Maturity Date. The Loan shall mature and all outstanding and unpaid amounts under the Loan, including all outstanding and unpaid principal, interest, and any other amounts, shall become due and payable on November 1, 2019 (the "Maturity Date").

6. Security Interest. In order to secure the full and timely payment and performance of all amounts due under the Loan and all of its obligations under this Agreement, Borrower hereby grants to the Lender a first-priority perfected security interest in all assets and properties

of the Borrower (the “Collateral”) pursuant to Section 364(c)(2) of the Bankruptcy Code, including, without limitation the following (all the terms below shall have the meanings given to such terms in the Uniform Commercial Code):

- (a) all accounts;
- (b) all goods (including all equipment and inventory);
- (c) all general intangibles, including payment intangibles and software;
- (d) all certificated securities and uncertificated securities;
- (e) all chattel paper, including electronic chattel paper;
- (f) all documents;
- (g) all financial assets;
- (h) all instruments;
- (i) all intellectual property;
- (j) all investment property;
- (k) all leasehold interests;
- (l) all supporting obligations;
- (m) all books, records, writings, data bases, information and other property relating to, used or useful in connection with, or evidencing, embodying, incorporating or referring to any of the foregoing, and
- (n) all proceeds, products, offspring, rents, issues, profits and returns of and from any of the foregoing, whether now owned, existing or hereafter arising.

Borrower represents and warrants that the Collateral is not currently subject to any other liens, encumbrances or security interests.

7. Super-Priority Administrative Claim. In addition to the first priority perfected security interest granted to the Lender pursuant to Section 7 above, all amounts owed under the Loan shall constitute, in accordance with Section 364(c)(1) of the Bankruptcy Code, an allowed

senior administrative claim against the Debtor having priority over any or all administrative expenses of the kind specified in, among other sections, Sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b) and 726 of the Bankruptcy Code, subject only to (a) the unpaid fees of the Clerk of the Court, (b) United States Trustee fees under 28 U.S.C. Section 1930 and 31 U.S.C. Section 3717, (c) the fees of a hypothetical chapter 7 trustee in an amount not to exceed \$10,000 and (d) proceeds from avoidance actions under Article V of the Bankruptcy Code.

8. Lien Validation and Perfection. All liens authorized and granted pursuant to this Agreement and the Financing Orders shall be deemed effective and perfected as of the date of the Financing Orders, and no further filing, notice or act will be required to accomplish such perfection.

9. Financial Reporting. Borrower acknowledges and agrees that within fifteen (15) days of month-end Borrower shall provide Lender with monthly financial statements of Borrower, including a balance sheet, income statement, and cash flow statement. Borrower will notify Lender of any material change in Borrower's business, financial condition or prospects, including the status, prospects and timing of the Borrower's ability to maintain its business operations, and the status of any licenses or permits with the City of New York. Borrower will cooperate in providing any and all other financial information or information with respect to Borrower's business operations that may be reasonably requested by Lender from time to time.

10. Termination Event; Remedies.

a. Each of the following shall constitute a "Termination Event": (i) the failure to make any payment when due; (ii) noncompliance with any requirement related to the Loan, other than the requirement that Borrower make any and all payments when due, following three (3) days' notice and opportunity to cure; (iii) breach of any representations or warranties

contained herein; (iv) confirmation of a plan of reorganization or liquidation for the Borrower; (v) appointment of an examiner or a trustee for the Borrower; (vi) dismissal of the Bankruptcy Case; (vii) conversion of the Bankruptcy Case to a case under Chapter 7 of the Bankruptcy Code; (viii) entry of an order by the Bankruptcy Court granting relief from the automatic stay to permit foreclosure on any Collateral; (ix) entry of any order by the Bankruptcy Court granting any super-priority claim which is senior or *pari passu* to Lender's claims; (x) reversal, suspension, stay, amendment, or modification (without the prior consent of Lender) of the Financing Orders; (xi) payment of, or granting adequate protection with respect to any prepetition debt except as provided in the Budget or by written consent of the Lender; (xii) cessation or impairment of liens and super-priority claims granted to the Lender with respect to the Loan; (xiii) payment of any expenditure other than to the extent and timing inconsistent with the Budget; or (xiv) any termination of the Management Agreement (as defined herein).

b. Immediately upon the occurrence of a Termination Event, without the requirement for notice of any nature to the Borrower, and without the requirement or necessity for obtaining any further relief or order from the Bankruptcy Court, including relief from the automatic stay or modification of the Financing Orders: (i) all amounts outstanding under the Loan, including without limitation all interest and principal, shall be accelerated and shall be immediately due and payable in cash in full within seven (7) days after written demand therefor; and (ii) Lender shall have all rights available to it under the Financing Orders, the Bankruptcy Code and applicable law, including as a secured creditor under the Uniform Commercial Code.

11. Payment of Lender Expenses. Lender shall have no obligations under this Loan Agreement unless and until Borrower pays \$5,000 towards the out-of-pocket expenses of the Lender incurred in the negotiation, documentation and implementation of the Loan; *provided, however,* that such payment does not constitute a cap of such expenses. Borrower may pay such expense from the proceeds of the Loan. On and after the occurrence of any Termination Event, Borrower shall reimburse Lender for any and all costs of collection, which amounts, if not immediately paid upon demand, shall be added to the principal of the Loan and shall accrue interest as overdue principal payments as provided herein.

12. Notice. Any notice, request, instruction or other document to be given or furnished under this Loan Agreement by any party to the other party shall be in writing and shall be delivered personally by a third party courier or other creditable delivery service for which a certification of delivery is provided, or shall be sent by facsimile transmission with transmit confirmation report or registered or certified mail, postage prepaid, or by prepaid overnight delivery service, to the following addresses or facsimile numbers:

If to Borrower: Manhattan River Group LLC,
348 Dyckman Street
New York, NY 10034
Attention: Joshua Rosen

If to Lender: Waterfront Hospitality Partners LLC
110 East 59th Street, RM 3201
New York, New York 10022
Attention: Adam Mizrachi

or to any such other address, facsimile number or person as any party may designate by written notice to the other party. A notice, request, instruction or other document shall be deemed to be given (i) when delivered personally, as certified by the courier or delivery service, (ii) when sent by facsimile transmission with transmit confirmation report, or (iii) if sent by certified mail or

overnight delivery service, at the time of delivery as indicated on the duly completed U.S. Postal Service return receipt of the time of package pickup as indicated on the records of or certificates provided by the overnight delivery service.

13. Conditions Precedent. The effectiveness of this Agreement is expressly conditioned upon (i) the entry of the Financing Orders by the Bankruptcy Court approving and authorizing this Agreement in full, in form and substance satisfactory to the Lender in its sole discretion, no later than June 1, 2019; and (ii) the entry of an order by the Bankruptcy Court approving and authorizing the Management Agreement dated May 7, 2019 between the Debtor and 369 Hudson River Partners LLC (the “Management Agreement”) no later than May 14, 2019.

14. Conversion Rights. In the event of the confirmation of a plan of reorganization of the Borrower (“Plan”), Lender shall have the sole discretion to convert all of the then-outstanding indebtedness hereunder to equity in the reorganized Borrower entity. The principal amount of the loan indebtedness hereunder shall convert at the rate of six percent (6%) equity interest for every \$50,000 in outstanding indebtedness hereunder. Lender shall provide written notice of its intent to convert to Borrower by the later of (i) thirty (30) days prior to the scheduled confirmation hearing on the Plan, and (ii) thirty (30) days after Borrower provides Lender with a fully negotiated operating agreement for the Borrower. Notwithstanding anything to the contrary herein, Lender shall have the right to exercise the conversion option described herein upon confirmation of the Plan.

LOAN AGREEMENT

Borrower Signature Page

MANHATTAN RIVER GROUP LLC
as Borrower

By/s/ *Josh Rosen*
Joshua Rosen, Managing Member

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SIGNATURE PAGE OF LENDER TO FOLLOW.

LOAN AGREEMENT

Lender Signature Page

WATERFRONT HOSPITALITY PARTNERS LLC
as Lender

By: /s/ Adam Mizrachi

Name: Adam Mizrachi

Title: Manager

4500 · Office expenses

Week Budget Pg 2 of 2

4510 · Office supplies	\$ 1,500	\$ 81	\$ 81	\$ 98	\$ 98	\$ 98	\$ 98	\$ 115	\$ 133	\$ 133	\$ 133	\$ 133	\$ 133	\$ 150	\$ 150
4520 · Telephone	\$ 2,400	\$ 129	\$ 129	\$ 157	\$ 157	\$ 157	\$ 157	\$ 185	\$ 212	\$ 212	\$ 212	\$ 212	\$ 212	\$ 240	\$ 240
4540 · Freight and Deliveries	\$ 5,000	\$ 269	\$ 269	\$ 327	\$ 327	\$ 327	\$ 327	\$ 385	\$ 442	\$ 442	\$ 442	\$ 442	\$ 442	\$ 500	\$ 500
4550 · Computer repairs	\$ 5,000	\$ 269	\$ 269	\$ 327	\$ 327	\$ 327	\$ 327	\$ 385	\$ 442	\$ 442	\$ 442	\$ 442	\$ 442	\$ 500	\$ 500
Total 4500 · Office expenses	\$ 13,900	\$ 748	\$ 748	\$ 909	\$ 909	\$ 909	\$ 909	\$ 1,069	\$ 1,230	\$ 1,230	\$ 1,230	\$ 1,230	\$ 1,230	\$ 1,390	\$ 1,390
4600 · Music and Entertainment															
4670 · Extra entertainment	\$ 7,800	\$ 420	\$ 420	\$ 510	\$ 510	\$ 510	\$ 510	\$ 600	\$ 690	\$ 690	\$ 690	\$ 690	\$ 690	\$ 780	\$ 780
4650 · Equipment rent - music / events	\$ 7,800	\$ 420	\$ 420	\$ 510	\$ 510	\$ 510	\$ 510	\$ 600	\$ 690	\$ 690	\$ 690	\$ 690	\$ 690	\$ 780	\$ 780
4600 · Music and Entertainment - Other	\$ 9,750	\$ 525	\$ 525	\$ 638	\$ 638	\$ 638	\$ 638	\$ 750	\$ 863	\$ 863	\$ 863	\$ 863	\$ 863	\$ 975	\$ 975
Total 4600 · Music and Entertainment	\$ 25,350	\$ 1,365	\$ 1,365	\$ 1,658	\$ 1,658	\$ 1,658	\$ 1,658	\$ 1,950	\$ 2,243	\$ 2,243	\$ 2,243	\$ 2,243	\$ 2,243	\$ 2,535	\$ 2,535
4800 · Promotion activities															
4840 · Marketing materials	\$ 15,000	\$ 5,000	\$ 1,000	\$ 1,000	\$ 1,000	\$ 1,000	\$ 1,000	\$ 1,000	\$ 1,000	\$ 1,000	\$ 1,000	\$ 1,000	\$ 1,000	\$ -	\$ -
Total 4800 · Promotion activities	\$ 15,000	\$ 5,000	\$ 1,000	\$ 1,000	\$ 1,000	\$ 1,000	\$ 1,000	\$ 1,000	\$ 1,000	\$ 1,000	\$ 1,000	\$ 1,000	\$ 1,000	\$ -	\$ -
4900 · Other expenses															
4910 · Licenses and Permits	\$ 4,000	\$ 2,000	\$ 2,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
4980 · Interest expenses	\$ 4,332	\$ -	\$ 361	\$ 361	\$ 361	\$ 361	\$ 361	\$ 361	\$ 361	\$ 361	\$ 361	\$ 361	\$ 361	\$ 361	\$ 361
Total 4900 · Other expenses	\$ 8,332	\$ 2,000	\$ 2,361	\$ 361	\$ 361	\$ 361	\$ 361	\$ 361	\$ 361	\$ 361	\$ 361	\$ 361	\$ 361	\$ 361	\$ 361
Total Expense	\$ 719,069	\$ 124,015	\$ 37,577	\$ 42,044	\$ 42,044	\$ 42,043	\$ 42,043	\$ 48,510	\$ 54,977	\$ 54,977	\$ 54,977	\$ 54,977	\$ 54,977	\$ 60,443	\$ 60,443
Net Ordinary Income	\$ 23,511	\$ (84,030)	\$ 2,408	\$ 6,510	\$ 6,510	\$ 6,510	\$ 6,510	\$ 8,611	\$ 10,713	\$ 10,713	\$ 10,713	\$ 10,713	\$ 10,713	\$ 13,815	\$ 13,815
DIP Loan Financing	\$ 150,000	\$ 150,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Net Cash Balance with DIP Loan		\$ 65,970	\$ 68,378	\$ 74,888	\$ 81,398	\$ 87,908	\$ 94,418	\$ 103,029	\$ 113,742	\$ 124,455	\$ 135,168	\$ 145,882	\$ 159,697	\$ 173,511	

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:

MANHATTAN RIVER GROUP, LLC,

Chapter 11

Case No. 18-14125(SHL)

Debtor.

-----X

**INTERIM ORDER AUTHORIZING DEBTOR TO OBTAIN
LOAN FROM WATERFRONT HOSPITALITY PARTNERS LLC PURSUANT TO
SECTION 364(c)(2) OF THE BANKRUPTCY CODE**

UPON the motion (the "Motion") of the above-captioned debtor and debtor-in-possession (the "Debtor"), by its attorneys, Rattet PLLC, pursuant to sections 105, 362, 363, 364(c)(1), 364(c)(2) and 507 of Title 11 of the United States Code (the "Bankruptcy Code"), Rules 2002, 4001, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Local Rule 4001-2 of the Local Bankruptcy Rules, seeking, among other things, (a) authorization for Debtor to obtain postpetition financing (the "Loan") consisting of a multiple-draw term loan in the aggregate amount of \$150,000; (b) authorization for Debtor to enter into that certain Loan Agreement (the "Loan Agreement"), a copy of which is attached to the Motion, by and between Debtor and Waterfront Hospitality Partners LLC ("Lender"), (c) the granting of a first priority security interest in all of Debtor's properties and assets in favor of Lender to secure Debtor's obligations under the Loan Agreement; (d) the granting of superpriority administrative expense claims against Debtor in favor of the Lender; (e) pursuant to Bankruptcy Rule 4001, setting an interim hearing (the "Interim Hearing") on the Motion to be held before this Court to consider entry of this Order, among other things, authorizing Debtor, on an interim basis, to borrow from the Lender under the Loan Agreement up to an aggregate principal amount not to exceed \$150,000; and (d) that this Court schedule a final hearing (the "Final Hearing") to

consider entry of a final order authorizing, among other things, Debtor, on a final basis, to borrow from the Lender under the Loan Agreement up to an aggregate principal amount of no more than \$150,000; and it appearing that adequate notice of the Motion has been given, no objections having been made or any objections otherwise being withdrawn, settled or overruled; and an interim hearing having been held on May 14, 2019; and the Court, upon the record at the Interim Hearing and after due deliberation and consideration and sufficient cause appearing therefor:

IT IS FOUND, DETERMINED, ORDERED AND ADJUDGED, that:

1. **Disposition.** The Motion is granted on an interim basis in accordance with the terms of this Order. Any objections to the Motion with respect to the entry of this Order that have not been withdrawn, waived or settled, and all reservation of rights included therein, are hereby denied and overruled.

2. **Jurisdiction and Venue.** This Court has jurisdiction over the Motion, the parties and all property and assets affected hereby pursuant to 28 U.S.C. §§ 157(b) and 1334(b). Consideration of the Motion constitutes a core proceeding as defined in 28 U.S.C. § 157(b)(2). Venue for these proceedings and the Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief sought in the Motion include Sections 105, 362, 363, and 364 of the Bankruptcy Code, Bankruptcy Rule 4001, and Local Bankruptcy Rule 4001-2.

3. **Notice.** Under the circumstances, the notice given by Debtor of the Motion, the relief requested therein, and the Interim Hearing constitutes due and sufficient notice thereof and complies with Bankruptcy Rules 4001(b) and (c), and no further notice of the relief sought at the Interim Hearing and the relief granted herein is necessary or required.

4. **Debtor's Stipulation.** Debtor represents, admits, stipulates, and agrees that, as of the date of this Order, none of the Debtor's assets or properties are currently subject to any liens, encumbrances or security interests.

5. **Findings Regarding the Loan Agreement.**

a. Good Cause has been shown for the entry of this Order.

b. The ability of Debtor to finance necessary capital expenditures and its operations, to preserve and maintain the value of its assets, and to maximize a return for all creditors requires the availability of the Loan and Debtor's entry into the Loan Agreement, the absence of which would immediately and irreparably harm the Debtor, its assets, and its creditors.

c. Debtor is unable to obtain financing on more favorable terms from sources other than the Lender under the Loan Agreement and is unable to obtain adequate unsecured credit allowable under Bankruptcy Code section 503(b)(1) as an administrative expense. Debtor is also unable to obtain secured credit allowable under Bankruptcy Code sections 364(c)(1) and 364(c)(2) for the purposes set forth in the Loan Agreement without Debtor granting to the Lender the Liens (as defined below) and the Superpriority Claims (as defined below) under the terms and conditions set forth in this Order and the Loan Agreement.

d. The terms of the Loan Agreement are fair and reasonable, reflect Debtor's exercise of prudent business judgment consistent with its fiduciary duties and constitute reasonably equivalent value and fair consideration.

e. The Loan Agreement has been negotiated in good faith and at arm's length between Debtor and the Lender.

6. **Authorization of the Loan Agreement.** Debtor is hereby expressly authorized and empowered to execute and deliver and, on such execution and delivery, directed to perform under

the Loan Agreement, which is hereby approved and incorporated herein by reference. Upon the entry of this Order, Debtor, in accordance with the procedures set forth in the Loan Agreement, is hereby authorized to borrow up to an aggregate principal amount of \$150,000, the proceeds of which shall be used solely for the purposes permitted under the Loan Agreement and this Order and consistent with a budget (the “Budget”) attached to the Loan Agreement as Exhibit A. In furtherance of the foregoing and without further approval of this Court, Debtor is authorized, and the automatic stay imposed by Bankruptcy Code section 362 is hereby lifted to the extent necessary and applicable, to perform all acts and to make, execute and deliver all instruments and documents, and to pay all fees, expenses, and other amounts that may be reasonably required or necessary for Debtor’s performance of its obligations under the Loan Agreement.

7. **Use of Loan Proceeds.** The proceeds of the Loan shall be used solely for the purposes of financing ordinary and customary business operations of the Borrower.

8. **Interest Rate; Interest Payments.** The outstanding principal balance of the Loan, measured on a daily basis, shall accrue interest at the rate of twelve (12%) percent per annum. All outstanding interest shall be due and payable in full within seven (7) days after written demand following the earlier to occur of the Maturity Date and a Termination Event (as such terms are defined below). Any overdue Interest Payments and any overdue payments of principal, including any amounts that are outstanding after the Maturity Date or a Termination Event, shall accrue interest thereon at the rate of sixteen percent (16%) per annum until the date of payment.

9. **Principal Repayment.** All outstanding and unpaid principal shall be due and payable in full within seven (7) days after written demand following the earlier to occur of the Maturity Date or a Termination Event. No amount of principal that is repaid may be borrowed.

10. **Maturity Date.** The Loan shall mature and all outstanding and unpaid amounts under the Loan, including all outstanding and unpaid principal, interest, and any other amounts, shall become due and payable on November 1, 2019 (the “Maturity Date”).

11. **Security Interest.** In order to secure the full and timely payment and performance of all amounts due under the Loan and all of its obligations under this Agreement, Lender is hereby granted a first-priority perfected security interest in all assets and properties of the Borrower (the “Collateral”) pursuant to Section 364(c)(2) of the Bankruptcy Code.

12. **Super-Priority Administrative Claim.** In addition to the first priority perfected security interest granted to the Lender, all amounts owed under the Loan shall constitute, in accordance with Section 364(c)(1) of the Bankruptcy Code, an allowed senior administrative claim against the Debtor having priority over any or all administrative expenses of the kind specified in, among other sections, Sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b) and 726 of the Bankruptcy Code, subject only to (a) the unpaid fees of the Clerk of the Court, (b) United States Trustee fees under 28 U.S.C. Section 1930 and 31 U.S.C. Section 3717, (c) the fees of a hypothetical chapter 7 trustee in an amount not to exceed \$10,000 and (d) proceeds from avoidance actions under Article V of the Bankruptcy Code.

13. **Lien Validation and Perfection.** All liens granted to the Lender shall be deemed effective and perfected as of the date of this Order, and no further filing, notice or act will be required to accomplish such perfection.

14. **Termination Event; Remedies.**

a. Each of the following shall constitute a “Termination Event”: (i) the failure to make any payment when due; (ii) noncompliance with any requirement related to the Loan, other than the requirement that Borrower make any and all payments when due, following

three (3) days' notice and opportunity to cure; (iii) breach of any representations or warranties contained herein; (iv) confirmation of a plan of reorganization or liquidation for the Borrower; (v) appointment of an examiner or a trustee for the Borrower; (vi) dismissal of the Bankruptcy Case; (vii) conversion of the Bankruptcy Case to a case under Chapter 7 of the Bankruptcy Code; (viii) entry of an order by the Bankruptcy Court granting relief from the automatic stay to permit foreclosure on any Collateral; (ix) entry of any order by the Bankruptcy Court granting any super-priority claim which is senior or *pari passu* to Lender's claims; (x) reversal, suspension, stay, amendment, or modification (without the prior consent of Lender) of this Order; (xi) payment of, or granting adequate protection with respect to any prepetition debt except as provided in the Budget or by written consent of the Lender; (xii) cessation or impairment of liens and super-priority claims granted to the Lender with respect to the Loan; (xiii) payment of any expenditure other than to the extent and timing inconsistent with the Budget; or (xiv) any termination of the Management Agreement (as defined herein).

b. Immediately upon the occurrence of a Termination Event, without the requirement for notice of any nature to the Borrower, and without the requirement or necessity for obtaining any further relief or order from the Bankruptcy Court, including relief from the automatic stay or modification of this Order: (i) all amounts outstanding under the Loan, including without limitation all interest and principal, shall be accelerated and shall be immediately due and payable in cash in full within seven (7) days after written demand therefor; and (ii) Lender shall have all rights available to it under this Order, the Bankruptcy Code and applicable law, including as a secured creditor under the Uniform Commercial Code.

15. **Conditions Precedent.** As set forth in the Loan Agreement, the effectiveness of the Loan Agreement is conditioned upon, among other things, the entry of an order by the Bankruptcy Court approving and authorizing the Management Agreement dated May 7, 2019 between the Debtor and 369 Hudson River Partners LLC (the “Management Agreement”) no later than May 14, 2019.

16. **Limitation of Liability.** In determining to make the Loan under the Loan Agreement, the Lender shall not be deemed to be in control of the operations of Debtor or to be acting as a “responsible person” or “owner or operator” with respect to the operation or management of Debtor or its respective business (as such terms, or any similar terms, are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 29 U.S.C. §§ 9601 et seq. as amended, or any similar federal or state statute), nor shall it owe any fiduciary duty to Debtor, its creditors or estates, or constitute or be deemed to constitute a joint venture or partnership with Debtor. Furthermore, nothing in this Order or the Loan Agreement shall in any way be construed or interpreted to impose or allow the imposition upon the Lender of any liability for any claims arising from the prepetition or postpetition activities of Debtor.

17. **Reservation of Rights of the Lender.** Notwithstanding any other provision in this Order to the contrary, the entry of this Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, or otherwise impair, the Lender from taking any action, including, without limitation, any action with respect to the Loan, the Loan Agreement, Debtor, and the Bankruptcy Case.

18. **Effectiveness.** This Order shall constitute findings of fact and conclusions of law immediately upon entry hereof. Notwithstanding any Bankruptcy Rule or Federal Rules of Civil

Procedure, this Order shall be immediately effective and enforceable upon its entry and there shall be no stay of the effectiveness of this Order.

19. **Final Hearing.** A final hearing to consider the relief granted herein on a final basis shall be held before the Honorable Sean H. Lane, Bankruptcy Judge, at the United States Bankruptcy Court, One Bowling Green, Courtroom 601, New York, New York 10004 on June __, 2019 at 10:00 a.m., or as soon thereafter as counsel may be heard. Any objections to the final relief requested in the Motion shall be made in writing, filed with the Bankruptcy Court at the Court's website www.nysb.uscourts.gov/ (login and password required), with a copy delivered directly to Chambers and served upon: (a) Rattet PLLC, attorneys for the Debtor, 202 Mamaroneck Avenue, Suite 300, White Plains, New York 10601, attn: Robert L. Rattet, Esq.; and (b) Waterfront Hospitality Partners LLC, 110 East 59th Street, RM 3201, New York, New York 10022, attn.: Adam Mizrachi, so as to allow actual receipt by the foregoing no later than _____, 2019.

Dated: New York, New York
May __, 2019

HONORABLE SEAN H. LANE
UNITED STATES BANKRUPTCY JUDGE

RATTET PLLC
Attorneys for the Debtor
202 Mamaroneck Avenue, Suite 300
White Plains, New York 10601
(914) 381-7400
Robert L. Rattet, Esq.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:

MANHATTAN RIVER GROUP, LLC,

Chapter 11
Case No. 18-14125(SHL)

Debtor.

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**AFFIRMATION PURSUANT TO LOCAL RULE 9077-1(a) IN SUPPORT OF
ORDER SCHEDULING HEARING ON SHORTENED NOTICE**

Robert L. Rattet, Esq., an attorney duly admitted to practice before this Court states
under the penalties of perjury:

1. I am a Member of the firm Rattet PLLC, counsel to Manhattan River Group,
LLC (the “Debtor”).

2. This affirmation is submitted in accordance with Local Bankruptcy Rule
9077-1(a) in support of its request for entry of an Order Scheduling a Hearing on Shortened Notice
for a Hearing on the Debtor’s motion (the “Motion”) seeking the entry of an Order approving a
debtor-in-possession loan to the Debtor pursuant to 11 U.S.C. §364(c)(1) and (2).

3. As set forth in the Debtor’s motion to approve the financing, the Debtor is
urgently in need of working capital as well as funds needed to cure its post-petition arrears to the
City of New York with respect its license for its restaurant/business premises.

4. The Debtor only has until May 20, 2019 to pay the approximate \$46,000 in post-petition license fees owed to the City in order to preserve the license.

5. The Debtor therefore requires a preliminary hearing on shortened notice, as Bankruptcy Rule 4001(c) requires approximately 17 days' notice prior to holding a final hearing.

6. In order to preserve and protect its estate, the Debtor would request a hearing by the Court as soon as possible during the week of May 13, 2019.

7. No previous request for the relief sought in the Motion has been made to this or to any other Court.

Dated: May 9, 2019
White Plains, New York

RATTET PLLC
Attorneys for the Debtor
202 Mamaroneck Avenue, Suite 300
White Plains, New York 10601
(914) 381-7400

By: /s/ Robert L. Rattet
Robert L. Rattet, Esq.